

## Office of the Secretary, Education

## § 33.2

SOURCE: 53 FR 15675, May 3, 1988, unless otherwise noted.

### § 33.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, 6101 through 6104, 100 Stat. 16674 (October 21, 1986), to be codified at 31 U.S.C. 3801 through 3812. This law (31 U.S.C. 3809) requires each Federal department head to promulgate regulations necessary to implement the provisions of the statute.

(Authority: 31 U.S.C. 3809)

(b) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Department or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for those penalties and assessments.

(Authority: 31 U.S.C. 3809)

### § 33.2 Definitions.

As used in this part:

*ALJ* means an Administrative Law Judge in the Department appointed pursuant to 5 U.S.C. 3105 or detailed to the Department pursuant to 5 U.S.C. 3344.

(Authority: 31 U.S.C. 3801(a)(7)(A))

*Benefits*, as used in the definition of “statement,” means anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(Authority: 31 U.S.C. 3809)

*Claim* means any request, demand, or submission:

(a) Made to the Department for property, services, or money (including money representing grants, cooperative agreements, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Department or to a party to a contract or agreement with the Department:

(1) For property or services if the United States:

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, cooperative agreements, loans, insurance, or benefits) if the United States:

(i) Provided any portion of the money requested or demanded;

(ii) Will reimburse the recipient or party for any portion of the money paid on that request or demand; or

(iii) Will guarantee or reinsure any portion of a loan made by the party; or

(c) Made to the Department which has the effect of decreasing an obligation to pay or account for property, services, or money.

(Authority: 31 U.S.C. 3801(a)(3))

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 33.7.

(Authority: 31 U.S.C. 3809)

*Defendant* means any person alleged in a complaint under § 33.7 to be liable for a civil penalty or assessment under § 33.3.

(Authority: 31 U.S.C. 3809)

*Department* means the United States Department of Education.

(Authority: 31 U.S.C. 3809)

*Department head* means the Secretary or Under Secretary of the United States Department of Education.

(Authority: 31 U.S.C. 3801(a)(2))

*Government* means the United States Government.

(Authority: 31 U.S.C. 3809)

*Individual* means a natural person.

(Authority: 31 U.S.C. 3809)

*Initial decision* means the written decision of the ALJ required by § 33.10 or § 33.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(Authority: 31 U.S.C. 3803(h))

### § 33.3

*Investigating official* means the Inspector General of the Department or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(Authority: 31 U.S.C. 3801(4)(A)(i))

*Knows or has reason to know*, means that a person, with respect to a claim or statement:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

(Authority: 31 U.S.C. 3801(5))

*Makes* includes the terms presents, submits, and causes to be made, presented, or submitted.

(Authority: 31 U.S.C. 3802(a))

*Person* means any individual, partnership, corporation, association, or private organization.

(Authority: 31 U.S.C. 3801(a)(6))

*Representative* means:

(a) An attorney who is a member in good standing of the bar of any State, territory, possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) Any other person designated by a party in writing, provided that the designation includes a certification that the party understands the nature and consequences of an administrative enforcement action under this part, and that he or she has the right to representation by counsel or to self-representation.

(Authority: 31 U.S.C. 3803(g)(2)(F))

*Reviewing official* means the General Counsel of the Department or his or her designee who is:

(a) Not subject to supervision by, or required to report to, the investigating official; and

(b) Not employed in the organizational unit of the Department in which

### 34 CFR Subtitle A (7-1-08 Edition)

the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(Authority: 31 U.S.C. 3801(8))

*Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for):

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, cooperative agreement, loan, or benefit from;

The Department, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, cooperative agreement, or benefit, or if the Government will reimburse or reinsure the State, political subdivision, or party for any portion of the money or property under the contract or for the grant, cooperative agreement, loan, or benefit.

(Authority: 31 U.S.C. 3801(9))

### § 33.3 Basis for civil penalties and assessments.

(a) *Claims*. (1) Any person who makes a claim that the person knows or has reason to know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that:

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed;